

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

STEPHEN POLK;

Plaintiff,

V.

TITLEMAX OF TEXAS, INC.;
ASSET RES SERVICES, LLC;
MVCONNECT, LLC,

Defendants.

Civil Action No. 3:21-cv-00075

**DEFENDANT ASSET RES SERVICES, LLC'S ANSWER AND
AFFIRMATIVE DEFENSES TO PLAINTIFF'S AMENDED
COMPLAINT**

COMES NOW Defendant, Asset Res Services LLC (“Asset Res Services”), by and through its undersigned counsel, and submits its Answer and Affirmative Defenses in response to Plaintiff’s Amended Complaint, and shows this Honorable Court as follows:

PARTIES

1. Asset Res Services is without knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 1 of Plaintiff's Amended Complaint and can therefore neither admit nor deny same.
2. Asset Res Services is without knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 2 of Plaintiff's Amended Complaint and can therefore neither admit nor deny same.

3. Asset Res Services admits that it is a Texas entity that does business in the state of Texas. The other allegations contained in Paragraph 3 of Plaintiff's Amended Complaint consist of legal conclusions and legal arguments to which no response is required.

4. Asset Res Services is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the Plaintiff's Amended Complaint and can therefore neither admit nor deny same.

JURISDICTION AND VENUE

5. Paragraph 5 of the Complaint consist of legal conclusions and legal arguments as to which no response is required. To the extent a response is required, venue is appropriate in this District and personal jurisdiction may exist over Asset Res Services. Asset Res Services denies liability related to any of the claims raised in the Complaint.

FACTUAL ALLEGATIONS

6. Asset Res Services is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6 of the Complaint and can therefore neither admit nor deny same.

7. Asset Res Services is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 7 of the Complaint and can therefore neither admit nor deny same.

8. Asset Res Services is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 8 of the Complaint and can therefore neither admit nor deny same.

9. Paragraph 9 of the Complaint consist of legal conclusions and legal arguments as to which no response is required. To the extent a response is required, Asset Res Services is

without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9 of the Complaint and can therefore neither admit nor deny same.

10. Asset Res Services is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10 of the Complaint and can therefore neither admit nor deny same.

11. Asset Res Services is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11 of the Complaint and can therefore neither admit nor deny same.

12. Asset Res Services is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 12 of the Complaint and can therefore neither admit nor deny same.

13. Admit.

14. Asset Res Services is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14 of the Complaint and can therefore neither admit nor deny same.

15. Asset Res Services is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 15 of the Complaint and can therefore neither admit nor deny same.

16. Asset Res Services is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 16 of the Complaint and can therefore neither admit nor deny same.

17. Asset Res Services is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 17 of the Complaint and can therefore neither admit nor deny same.

18. Asset Res Services is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 18 of the Complaint and can therefore neither admit nor deny same.
19. Asset Res Services is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 19 of the Complaint and can therefore neither admit nor deny same.
20. Asset Res Services denies the allegations contained in Paragraph 20 of Plaintiff's Amended Complaint.
21. Asset Res Services is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 21 of the Complaint and can therefore neither admit nor deny same.

COUNT ONE - CONVERSION CLAIM AGAINST DEFENDANTS

22. Asset Res Services incorporates by reference its answers to all preceding paragraphs as if fully restated herein.
23. Asset Res Services is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 23 of the Complaint and can therefore neither admit nor deny same.
24. Paragraph 24 of Plaintiff's Amended Complaint contains statements of law, legal conclusions, and seeks to require Asset Res Services to form legal conclusions. As such, no response is required. To the extent a response is deemed required, Asset Res Services denies the allegations contained in Paragraph 24 of Plaintiff's Amended Complaint.
25. Paragraph 25 of Plaintiff's Amended Complaint contains statements of law, legal conclusions, and seeks to require Asset Res Services to form legal conclusions. As such, no

response is required. To the extent a response is deemed required, Asset Res Services denies the allegations contained in Paragraph 25 of Plaintiff's Amended Complaint.

26. Paragraph 26 of Plaintiff's Amended Complaint contains statements of law, legal conclusions, and seeks to require Asset Res Services to form legal conclusions. As such, no response is required. To the extent a response is deemed required, Asset Res Services denies the allegations contained in Paragraph 26 of Plaintiff's Amended Complaint.

27. Asset Res Services denies the allegations contained in Paragraph 27 of Plaintiff's Amended Complaint.

28. Asset Res Services denies the allegations contained in Paragraph 28 of Plaintiff's Amended Complaint.

COUNT TWO - FDCPA CLAIM AGAINST DEFENDANT ASSET RES SERVICES AND DEFENDANT MVCONNECT, LLC

29. Asset Res Services incorporates by reference its answers to all preceding paragraphs as if fully restated herein.

30. Paragraph 30 of Plaintiff's Amended Complaint contains statements of law, legal conclusions, and seeks to require Asset Res Services to form legal conclusions. As such, no response is required. To the extent a response is deemed required, Asset Res Services denies the allegations contained in Paragraph 30 of Plaintiff's Amended Complaint.

31. Paragraph 31 of Plaintiff's Amended Complaint contains statements of law, legal conclusions, and seeks to require Asset Res Services to form legal conclusions. As such, no response is required. To the extent a response is deemed required, Asset Res Services denies the allegations contained in Paragraph 31 of Plaintiff's Amended Complaint.

32. Asset Res Services denies the allegations contained in Paragraph 32 of Plaintiff's Amended Complaint.

AMOUNT OF DAMAGES DEMANDED

33. Asset Res Services denies that Plaintiff is entitled to compensatory and/or punitive damages.
34. Asset Res Services denies that Plaintiff is entitled to statutory damages, costs, attorneys' fees, and/or any other compensatory damages.
35. Asset Res Services denies that Plaintiff is entitled to any relief.

PLAINTIFF'S DEMAND TRIAL BY STRUCK JURY

Asset Res Services acknowledges that Plaintiff has requested a trial by jury.

GENERAL DENIAL

Except as expressly admitted in this Answer, Asset Res Services denies each and every allegation in the Complaint.

ASSET RES SERVICES LLC'S AFFIRMATIVE DEFENSES

First Affirmative Defense

Plaintiff's claims are barred, in whole or in part, due to the actions, failure to act, negligence, fraud, and/or legal fault of a third party.

Second Affirmative Defense

To the extent that any violation of law occurred, which Asset Res Services expressly denies, the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance by Asset Res Services of policies and procedures reasonably adopted to avoid any such error. To that end, Asset Res Services has policies and procedures in place reasonably adopted to avoid the purported violations of the FDCA asserted in the complaint.

Third Affirmative Defense

Any purported misrepresentation and/or omission is not material within the meaning of the FDCPA, particularly in light of Asset Res Services' policies and procedures.

Fourth Affirmative Defense

To the extent it is determined that Asset Res Services violated the FDCPA, which Asset Res Services specifically denies, any award of damages or attorneys' fees would be improper because any such violation would be *de minimis*, inconsequential, or immaterial.

Fifth Affirmative Defense

Plaintiff's claims are barred, in whole or in part, by Plaintiff's failure to mitigate.

Sixth Affirmative Defense

Plaintiff is not entitled to exemplary damages.

Seventh Affirmative Defense

Plaintiff is not entitled to attorney's fees and/or costs.

Eighth Affirmative Defense

Asset Res Services expressly and specifically reserves the right to amend this Answer and to add, delete, or modify affirmative defenses based on legal theories, facts, and circumstances which may or will be developed through discovery or further legal analysis of Plaintiff's and Asset Res Services' position in this litigation.

PRAYER FOR RELIEF

Wherefore, the Defendant prays that the Court determine and adjudge as follows:

1. That the Complaint be dismissed with prejudice;
2. That Plaintiff take nothing by his Complaint;
3. That judgment be rendered in favor of Asset Res Services;

4. That Asset Res Services be awarded all of their costs, disbursements, and expenses incurred herein; and,

5. That the Court award such other and further relief as it deems just and proper.

Dated: October 14, 2021

Respectfully submitted,

HOLLAND & KNIGHT LLP

/s/ Jeffrey D. Anderson

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ATTORNEYS FOR DEFENDANT
ASSET RES SERVICES, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served by the Court's CM/ECF system to all counsel of record on this 14 day of October, 2021.

/s/ Jeffrey D. Anderson

Jeffrey D. Anderson